IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHMAN, BERENBAUM &)	
ASSOCIATES, L.L.C.; CHARLES I.)	
RICHMAN; BLAKE L. BERENBAUM;)	
and ELLIS COOK,)	
)	
Plaintiffs)	
)	
vs.) }	02 CV 2105
	,	02-CV-3195
CAROLINA CASUALTY INSURANCE)	
COMPANY; REUBEN KLUGMAN,)	
INDIVIDUALLY AND AS TRUSTEE OF)	
THE REUBEN KLUGMAN TRUST; and)	
JEFFREY L. RUDNICK;)	
)	
Defendants)	

NOTICE OF REMOVAL

TO: United States District Court For the Eastern District of Pennsylvania

PLEASEPLEASE TAKE NOTICE that on this date, Defendant Carolina CPLEASE TAKE NOT Company, Company, a Company, a Corporation (hereinafter "Carolina"), by its undersigned counsel, hereby Company casecase pursuant to 28 U.S.C. §1446 case pursuant to 28 U.S.C. §1446 to the Pennsylvania. In support thereof, Carolina states as follows:

- 1. Plaintiffs Plaintiffs Richman, Berenbaum & Associates, P.C., Charles I. RiPlaintiffs Richman, Berenbaum, Berenbaum, and Ellis Cook (hereinafter Richman, Berenbaum) filed this against Carolina on or about April 17, 2002. Carolina received against Carolina on or about April 17, 2002. April 23, 2002, but has not been served with the Complaint. Therefore, removal is timely.
- 2. InIn their Complaint, PlaintiffsIn their Complaint, Plaintiffs seek a declaration that Carolina has adu indemnifyindemnify them for a legal malpractice claim made against indemnify them for a legal malpractice claim and as Trustee of the Reuben Klugman Trust.

- 3. Plaintiffs Plaintiffs are citizens of Pennsylvania, and practice lawPlaintiffs are citizens of Pennsylvania through Richman, Berenbaum, a Pennsylvania corporation.
- 4. Defendant Defendant Carolina is incorporated under the lawsDefendant Carolina is incorporated unprincipal place of business in Florida.
- 5. Plaintiffs Plaintiffs have also named Jeffrey Plaintiffs have also named Jeffrey Rudnick (Rudnick firmfirm of Richman, Berenbaum. Rudnick, firm of Richman, Berenbaum. Rudnick, as a former attorney with the coverage under the Carolina policy, should be realigned as a party plaintiff.
- 6. The The positioning of the parties for purposes of The positioning of the parties for purposes of dive principal purpose of the suit, and the primary and controllprincipal purpose of the suit, and the primary *MaccabeesMaccabees Life Ins. Co.*, 77 F.3d 701, 703 (3rd Cir. 1996),, 77 F.3d 701, 703 (3rd Cir. 1996), citing *City Bk.*,, 314 U.S. 63, 62., 314 U.S. 63, 62 S.Ct. 15., 314 U.S. 63, 62 S.Ct. 15 (1941); *Employers Ins. of Wausau v. Crov* 862,862, 864 (3rd Cir. 1991). *See also Martin v. Universal Underwriters Co.*, 676 F.Supp. 77, 78 (E.D.Pa. 1987). This Court must first identify (E.D.Pa. 1987). This Court must first identify the primary whether there is a real dispute by opposing parties over that issue. *Id*.
- 7. The The primary issue in the primary issue in this case is whethe primary issue in this case is we Berenbaum Berenbaum for this suit. Rudnick, who also seeks defense and indemnity from Carolina ferenbauk. Klugman claim, was joined in this action by Plaintiffs as a necessary party.
- 8. CarolinaCarolina asserts that it has no Carolina asserts that it has no obligCarolina asserts the Berenbaum, Berenbaum, or any other party, for the Klugman claim. Carolina s interestsBerenbaum to those of Richman, Berenbaum, and Rudnick.
- 9. Accordingly, Accordingly, as all these parties Accordingly, as all these parties seek coverage from Cathethe interests of Richman, Berenbaum and Klugman are aligned for purposes of the interests of Richman, action. Therefore, the parties should be realigned to action. Therefore, the parties should be realigned to refer e.g., e.g., Truck Ins. Exchange v. Ashland Oil, Inc., 951 F.2d 787

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¹Plaintiffs assert that Rudnick is a necessaryPlaintiffs assert that Rudnick is a necessary party to this litigation. Although this issue is no CarolinaCarolina nonetheless hasCarolina nonetheless has no objection to this joinder, nor does Rudnick s Carolina nonetheless has have been properly aligned.

BankersBankers and Shippers Ins. CBankers and Shippers Ins. Co. of New Bankers and Shippers Ins. Smotherman v. Caswell, 755 F.Supp. 346 (D.Kansas 1990).

- 10. The The Plaintiffs and Defendants are ther The Plaintiffs and Defendants are therefore The Plaintiffs and Berenbaum Berenbaum and Rudnick are residents of the state of Pennsylvania, while Defendant Carolina is a citizen of the state of Florida.
- 11. ReuReubenReuben Klugman (Klugman), the underlying claimant, is also named as a Defendant in this action. Klugman is a citizen of Florida.
- 12. The The existence of a fraudulently joined party may be disregarded fThe existence of a fraudulently in determining diversity determining diversity jurisdictdetermining diversity jurisdiction. *Spring-Fo* F.Supp.2dF.Supp.2d 476, 479 (E.D.Pa. 2001). A party has been fraudulently joF.Supp.2d 476, 479 (E.D.Pa reasonable basis in fact or colorable reasonable basis in fact or colorable ground suppreasonable basis defendant, or no real intention in good faith to prosecute the action against the defendant. *Id.*,
- 13. Plaintiffs Plaintiffs assert no Plaintiffs assert no claim against Klugman, nor or prosecuting a cause of action against Klugman.prosecuting a cause of action against Klugman. Becombaum seek any relief from Klugman, do Richman, Berenbaum seek any relief from Klugman findfind that the complaint states a cause of action against Klugman. find that the complaint states a cause of action against Klugman.
- 14. Further, pursuant to Fed.R.Civ.P. 19, Klugman is not aFurther, pursuant to Fed.R.Civ.P. 19 this lawsuit. 158 F.Suthis lawsuit. 158 F.Supp. this lawsuit. 158 F.Supp. at 483. Complete relief can be Klugman Klugman has no legally protected interest relating to whether Carolina has a duty to determine the complete relief can be complete.

²This action is primarily one to determine whether This action is primarily one to determine whether Carolina has a duty to defend Ric InIn Klugman s complling Klugman s complaint, In Klugman s complaint, Klugman alleges, in part, that Richman, Berenbaum conspracticepractice of law, and did so knowingly, and to derive financial gain. See Klugman Second See Klugman Second AmendSe Therefore, Therefore, until the underlying action is resolved, the parties cannot determine the applicability of certain Therefore, until the policypolicy exclusions, including, for example, Exclusion A which provides that Carolina shall not policy exclusions, including, for paymentpayment in connection with anypayment in connection with any Claim based upon, arising out of, directly or indirectly resulting of, of, or in any way involving a dishonest, fraudulent, direction of, or ratified by an Insured. . .

AnAn insurer must indemnAn insurer must indemnify onlAn insurer must indemnify only if the insured is held liable for a cl Corp. Corp. v. Adriatic Corp. v. Adriatic Ins. Corp. v. Adriatic Ins. Co., 99 F.Supp.2d 593, 611-612 (W.D.Pa. 2000); West Amer. Ins. Co. v. 220220 (E.D. Pa. 2000). Thus, the duty to indemnify is necessarily narrower than th220 (E.D. Pa. 2000). Thus, the duty to indedetermination of such duty is based upon the actual material facts established at the trial such, such, the duty to indemnify does not unit the liability improved ingly, Accordingly, a ruling on the duty to indemnify, as to this issue, would Accordingly, a ruling on the duty to indemnify, as to

RichmRichman, Richman, Berenbaum for Klugman s claim. *Id.* at 483-84. Klugman is therefore fraudulenta joined joined in this joined in this suit, and should be disregarded for purposes of joined in this suit, and should be

- 15. Additionally, Additionally, even if Klugman was Additionally, even if Klugman was not fraud nominal or formal party to this suit, because Klugman has nonominal or formal party to this suit, because a duty to defend. *See Spring-Ford*, 158 F.Supp.2d at 484, n. 4., 158 F.Supp.2d at 484, n. 4. Carolina submits to should should disregard ashould disregard a nominal or fshould disregard a nominal or formal party and rest jurparties parties to the controvparties to the controversy. *Id.*, citing *Bumberger v. Ins. Co.* (3rd Cir. 1991).
 - The amount in controversy exceeds \$75,000.
- 17. The present lawsuit is therefore The present lawsuit is therefore removable from state The present the United States pursuant to 28 U.S.C. §1332(a)(1) and §1441(a).
- 18. TrueTrue copies of all process, True copies of all process, pTrue copies of all process, pleading attached hereto as Exhibit A.

WHEREFORE, WHEREFORE, defendant, Carolina Casualty Insurance copy respectfully requests that this Honorable Court Honorable Court enter an Order allowing Removal, and for Honorable Court enter an may deem equitable and just.

context of this declaratory action. Id.

PLEASEPLEASE TAKE FURTHER NOTICE that Defendant Carolina, upon filing this PLEASE TAKE RemovaRemovalRemoval in the Office of the Clerk of the United States District Court for the Eastern District PePennsylvania, Pennsylvania, has also caused to be filed copies of this Notice with the Clerk of the Pennsylvania CommonCommon Pleas, PhiladelphiaCommon Pleas, Philadelphia County, PCommon Pleas, Philadelphia Co 1446(d).

Respectfully submitted,

SPECTOR GADON & ROSEN, P.C.

By:

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